

\* \* \* EXCERPT OF PROCEEDINGS \* \* \*

DANIEL SOTO,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STUBBS:

Q Officer Soto, when were you employed by the Gallatin Police Department?

A February of 2010.

Q Where were you employed prior to your employment with the Gallatin Police Department?

A The City of Ridgeland, which is in Ridgeland, Mississippi.

Q Do you recall the case when you were a police officer for the City or Ridgeland against a gentleman named Charles Whitfield?

A Yes, sir, that's correct.

Q And did you, in fact, arrest him for DUI?

A That is correct.

Q And testified in his case where the State obtained a conviction against him?

A Yes, sir, that's correct.

Q Did you testify in that case falsely?

A No, sir.

Q You did not. You weren't on the witness stand?

EXHIBIT

9

1 A Can I elaborate on that?

2 Q Yes.

3 A Okay. What happened, there was a traffic stop  
4 happening approximately 2008 on Mr. Whitfield, and I was  
5 asked in court about a video. And at that time, at our  
6 police department, when you pulled up to the police  
7 department there were antennas outside the police  
8 department. So as soon as your vehicle got close enough  
9 to it, it would download videos to a server.

10 And during the trial, at a later date, I went  
11 and requested that video from our evidence. Whereas, the  
12 City of Gallatin, I can burn my own video from there. At  
13 that time, at the agency I worked at, you were not able to  
14 do that.

15 Q Did you, in fact, testify that there was no  
16 video and the State eventually reached a conviction?

17 A No, sir. They asked me, and I said I could not  
18 recall if there was a video or not, from my understanding.

19 Q And was, in fact, a motion for a new trial filed  
20 and a video was found of that stop?

21 A Yes, sir. At a later date.

22 Q And, in fact, did the video reflect that your  
23 testimony had not been truthful on how you represented the  
24 facts as to the arrest?

25 A Mr. Whitfield refused to do anything. He

1 refused to do field sobriety; he refused to cooperate.  
2 The only conflict that came up was with the time that  
3 Mr. Whitfield exited his vehicle. I said that he stumbled  
4 back. And on video -- and at a later date, which I was  
5 not at that trial at the later date, they said that he did  
6 not stumble backwards during that.

7 Q So the video was not consistent with what your  
8 testimony had been, right?

9 A My opinion, yes. Their opinion, no, sir, it was  
10 not.

11 Q Do you recall another case involving the  
12 defendant named Mr. Clack, Daniel Clack?

13 A Briefly. I don't remember much about that case.

14 Q You don't remember much about the case? Was it  
15 a DUI case in which you testified again that there was no  
16 video, and the case was overturned after video showed up  
17 after his conviction?

18 A This is the first that I've heard of that.

19 Q You're not aware of that?

20 A No, sir. I went to trial on Mr. Clack, he was  
21 found guilty. I had no idea that there was a retrial or  
22 that he did file an appeal. I was never asked to come  
23 back to that case.

24 Q Didn't you leave the City of Ridgeland Police  
25 Department because of false testimony in these cases?

1           A     No, sir. I left the City of Ridgeland Police  
2 Department because my wife took a job at Vanderbilt  
3 Children's Hospital. I had been trying for about a year  
4 to get employed here, and I was in the hiring process with  
5 the City of Gallatin and the City of Smyrna.

6           Q     How many times have you been sued now for  
7 providing false testimony in DUI cases in Ridgeland?

8           A     There was one suit filed.

9           Q     Against you? who was that?

10          A     Mr. Whitfield, the first case that you stated.

11                   MR. STUBBS: That's all I've got, Judge.

12                   THE COURT: Okay.

13                   General.

14                               CROSS-EXAMINATION

15          BY GENERAL WYLLIE:

16          Q     Mr. Soto, you were giving an explanation for the  
17 testimony in the Whitfield case and Mr. Tubbs cut you off.  
18 What else do you want to say about when you pulled up to  
19 the police department and how those videos were downloaded  
20 and how you weren't allowed to access them?

21          A     When you pull up, it automatically downloads to  
22 a server, which means I have no access to alter the video,  
23 delete the video, much less get the video. In order to  
24 get a copy of the video, you have to go to an evidence  
25 room, which is protected by a metal cage, and speak with



1 an evidence tech. At that time, you request the evidence  
2 you need for trial, which would have been that DVD. I was  
3 told by the evidence techs that there was no video.

4 So when I was asked about it in court, I advised  
5 I could not recall if there was or not. Somehow, I don't  
6 know how the video was found, but I requested video for  
7 that case for the initial trial and all that was  
8 documented. Not one time did I do anything with that  
9 video. It wouldn't have helped me at all. Mr. Whitfield  
10 refused to do field sobriety, he refused to do absolutely  
11 everything. So I did everything I could in my capability  
12 to receive that video and was told by evidence techs that  
13 there was no video of that case.

14 Q And did you feel like you were dishonest on the  
15 stand in that case?

16 A I do not. Absolutely not.

17 Q And when you were sued by Mr. Whitfield, what  
18 was the outcome of that federal lawsuit?

19 A They never would tell me. It just ended. After  
20 a deposition, it was ended.

21 Q So you didn't have to pay any money to him?

22 A Absolutely not.

23 Q So that lawsuit against you, then, was not  
24 successful in that report?

25 A To my knowledge. I asked about it and they

1 wouldn't tell me. They just said it was over with.

2 Q And how many people do you think you arrested  
3 while you were with the City of Ridgeland for a DUI?

4 A Probably close to 1,000.

5 Q If I started going through the list of names of  
6 those 1,000 people, would you be able to tell me of every  
7 single face, whether or not there was a video?

8 A No, ma'am.

9 Q And how did you find out if there was a video in  
10 cases?

11 A I was told at a later date -- I was called in  
12 and asked about it, and they said that there was one --  
13 that a video was found.

14 Q Well, forget Mr. Whitfield. If you wanted to  
15 know -- or if I asked you of all the 1,000 names and you  
16 had to go check with it, what would you do?

17 A I would go to our evidence room, and there is a  
18 clip board where you request evidence. And at that time,  
19 the evidence techs -- which we had several because it's a  
20 bigger department -- they go and locate it, and you have  
21 to sign out for it. And I was told that there was no  
22 video on that case.

23 Q So you were acting in good faith then when you  
24 said that on the stand?

25 A Yes, ma'am. Absolutely.

1 THE COURT: Okay.

2 Anything else, Mr. Stubbs?

3 MR. STUBBS: Yes, Your Honor. Just  
4 briefly.

5 REDIRECT EXAMINATION

6 BY MR. STUBBS:

7 Q I was actually looking at the wrong sheet, and I  
8 may have given out the wrong copy of that.

9 The same case, the charges against Mr. Whitfield  
10 in that case were dismissed, were they not, on appeal when  
11 they discovered that you had not given true testimony  
12 about the existence of the video tape?

13 A From my understanding it was because a due  
14 process because his attorney said that he was not given  
15 all the evidence on that case, which would have been the  
16 video.

17 MR. STUBBS: Judge, I think that's all I  
18 got. I'm going to need to make this an exhibit and give  
19 the Court a copy, as well, for the record.

20 THE COURT: Okay. We will make this  
21 Collective Exhibit A for purposes of this motion and  
22 hearing.

23 (Whereupon, the above-mentioned document  
24 was marked as Collective Exhibit A.)

25 THE COURT: Is it Sergeant or Officer?

1 THE WITNESS: It's Sergeant, sir.

2 THE COURT: Sergeant Soto, tell me again  
3 why you left Ridgeland. Are you telling me under oath  
4 that you were not fired?

5 THE WITNESS: No, sir, I was not fired.

6 THE COURT: Tell me why you left.

7 THE WITNESS: I resigned and took a job  
8 with the City of Gallatin.

9 THE COURT: And that's because your wife  
10 got a job at Vandy?

11 THE WITNESS: At Vanderbilt Children's  
12 Hospital. Yes, sir.

13 THE COURT: All right, sir.

14 MR. STUBBS: Let me ask one more after  
15 that.

16 THE COURT: Go ahead.

17 FURTHER DIRECT EXAMINATION

18 BY MR. STUBBS:

19 Q Let me ask you this -- and you're under oath.  
20 Were you given the option of resigning or being terminated  
21 after these cases came up with the City of Ridgeland?

22 A There is no "cases." I was brought in and asked  
23 about one particular case, which was Mr. Whitfield. I  
24 resigned. I was not fired.

25 Q You resigned when they brought up the case about



1 Mr. Whitfield?

2 A Shortly after that. Yes, sir.

3 Q Was the fact that they brought that up -- if you  
4 hadn't resigned were you concerned you were going to be  
5 terminated?

6 A No, sir. I was not concerned about being  
7 terminated at all.

8 Q So no one from the Ridgeland Police Department  
9 indicated to you that if you didn't resign you were going  
10 to be terminated?

11 A No, sir.

12 THE COURT: Okay.

13 Sergeant Soto, thank you. You may be  
14 excused.

15 (Whereupon, the examination of this witness  
16 was temporarily concluded and other matters  
17 were taken up. His examination resumed as  
18 follows:)

19 THE COURT: He's still under oath. Go  
20 ahead.

21 FURTHER DIRECT EXAMINATION

22 BY MR. STUBBS:

23 Q Officer Soto, when I was examining you  
24 previously, I specifically asked you whether or not your  
25 resignation was in the face or in response to a

1 notification that you were going to be terminated from the  
2 Ridgeland Police Department. And you denied that, didn't  
3 you?

4 A You asked me if I was going to be terminated  
5 from the Ridgeland Police Department.

6 Q I've asked you if you were going to --

7 A You asked me a question. If you're going to ask  
8 me a question, let me answer your question.

9 You asked me if I was terminated from the  
10 Ridgeland Police Department. I advised you that I was  
11 not.

12 Then you asked me -- well, go ahead and ask me a  
13 question.

14 Q I asked you if you resigned because you had been  
15 notified you were going to be terminated. You said, "no,"  
16 under oath.

17 A You asked me if I was going to be resigned -- if  
18 I had the option. You asked me if I had the option of  
19 being terminated or resigning.

20 MR. STUBBS: Judge, how difficult would it  
21 be to get the court reporter to go back to his testimony?

22 THE COURT: How difficult would it be?

23 THE COURT REPORTER: We would just need to  
24 take a brief recess, but I can go back.

25 THE COURT: Let's take a brief recess.

1 MR. STUBBS: Let's find out what he  
2 testified to.

3 THE COURT: will do.  
4 You may step down.

5 THE WITNESS: Yes, sir.  
6 We will be in recess.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: Okay. Mr. Soto is back on the  
9 witness stand. I think our court reporter has given you a  
10 copy of the transcript -- or a copy of the testimony?

11 MR. STUBBS: I was just going to have her  
12 read it back. Actually, part of it is the Court's  
13 examination.

14 THE COURT: Okay.

15 (Whereupon, the court reporter read back  
16 the previous examination of Daniel Soto.)

17 THE COURT: Go ahead.

18 BY MR. STUBBS:

19 Q Sergeant Soto, that was your testimony not an  
20 hour or so ago, an hour and a half ago, in this courtroom.  
21 Do you wish to correct that at this time?

22 A No, sir. I didn't have any concern about being  
23 fired because I didn't believe I had done anything wrong,  
24 sir.

25 THE COURT: That's not the question.

1 That's not the question.

2 Go ahead.

3 MR. STUBBS: May I approach the witness,  
4 Judge?

5 THE COURT: Go ahead.

6 BY MR. STUBBS:

7 Q Let me show you a copy of this letter, Sergeant  
8 Soto. would you look that over, please.

9 A Okay.

10 Q I'll show you a third page that says, "I, Chief  
11 Jimmy Houston, certify that I have delivered a  
12 pre-termination letter to Officer Daniel Soto." And It's  
13 got some signatures on it.

14 Is that a copy of your signature over the name  
15 of Daniel Soto?

16 A Yes, sir, it is.

17 Q So you recognize that letter?

18 A I recognize my signature. Yes, sir.

19 Q Do you not recognize the letter that it relates  
20 to?

21 A The one that you handed me first?

22 Q Yes, sir.

23 A Yes, sir, I do.

24 Q You received that letter, a pre-termination  
25 letter?



1           A     Correct.

2                     MR. STUBBS: Let's mark that as an exhibit  
3 to his testimony, Judge.

4                     THE COURT: It will be Exhibit B to  
5 motions.

6                     (Whereupon, the above-mentioned document  
7 was marked as Exhibit B.)

8 BY MR. STUBBS:

9           Q     Officer Soto, in fact, I specifically asked you  
10 if you resigned in response to the threat of being  
11 terminated for giving false testimony in cases. You  
12 corrected me, it was only one case, Mr. Whitfield's case.  
13 But you denied that, didn't you?

14          A     I said that I did not resign under the fact  
15 that -- I wasn't given the option of resigning or being  
16 fired.

17          Q     I asked you if you were threatened with  
18 termination, and you specifically said, "no." That letter  
19 right there says you're being terminated, doesn't it?

20          A     No, sir, it does not.

21          Q     And it actually adds an additional case to the  
22 whitfield case. Some case named Spreafico or something.  
23 That was another case you allegedly testified falsely in.

24          A     Yes, sir.

25                     This was a pre-termination hearing where I could

1 have brought evidence to that. That's not saying that I  
2 was fired, sir.

3 Q I didn't ask you if you were fired. I asked you  
4 if you resigned because of being threatened of being  
5 terminated for giving false testimony in these cases. I  
6 told you and warned you specifically you were under oath.  
7 Your answer was "no, sir."

8 A Mr. Stubbs, I was completely confident that I  
9 would have kept my job by going there and giving evidence.  
10 But at that time, I was already in the hiring process and  
11 taking a job up here in the state of Tennessee.  
12 Therefore, I did not go forward with bringing evidence or  
13 trying to fight these accusations here.

14 MR. STUBBS: That's all I have.

15 THE COURT: Question, look at the letter  
16 here. Have you got a copy?

17 THE WITNESS: Yes, sir, I do.

18 THE COURT: Last paragraph. It says,  
19 "Based on the above information, it is my intention to  
20 terminate your employment with the Ridgeland Police  
21 Department. I have scheduled a pre-termination hearing  
22 for Monday, February 8th, 2010, at 1:30 p.m. in the  
23 conference room adjoining my office. You may have one  
24 person present on your behalf for observation purposes  
25 only. Please be prepared to present any evidence that you

1 may possess that would give reason to why this termination  
2 should not proceed."

3                   You received a copy of this letter,  
4 correct?

5                   THE WITNESS: Yes, sir.

6                   THE COURT: And after this letter was  
7 received, did you resign from the police department?

8                   THE WITNESS: Yes, sir.

9                   THE COURT: Okay.

10                   Mr. Stubbs, I will allow you to on  
11 cross-examination under Rule 608(b) ask him if he received  
12 termination notice from the Chief of Police for  
13 falsification or willful misrepresentation of the police  
14 department incident reports and falsification or wilful  
15 misrepresentation of police department incident reports.  
16 Those are those two paragraphs there. You can ask him  
17 about that.

18                   After he testifies today, General, I don't  
19 want this Sergeant testifying in my courtroom in the  
20 future, period. I'm going to ask that a copy of the  
21 transcript of his testimony before and a copy of his  
22 testimony now be forwarded to the District Attorney's  
23 office for review for possible perjury.

24                   Let's move on and bring the jury in.

25                   END OF REQUESTED EXCERPT.